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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906

THE STATE OF WYOMING, EX RELATIONE THE WYOMING AGRICULTURAL COLLEGE AND MATT BORLAND, A. D. LANE, CARRIE B. MEYER, AMELIA S. HALL AND WILLIAM E HARDIN, AS TRUSTEES OF THE WYOMING AGRICULTURAL COLLEGE.

Plaintiffs in Error,

vs.

WILLIAM C. IRVINE, AS TREASURER OF THE STATE OF WYOMING,

Defendant in Error.

No. 272.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WYOMING.

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

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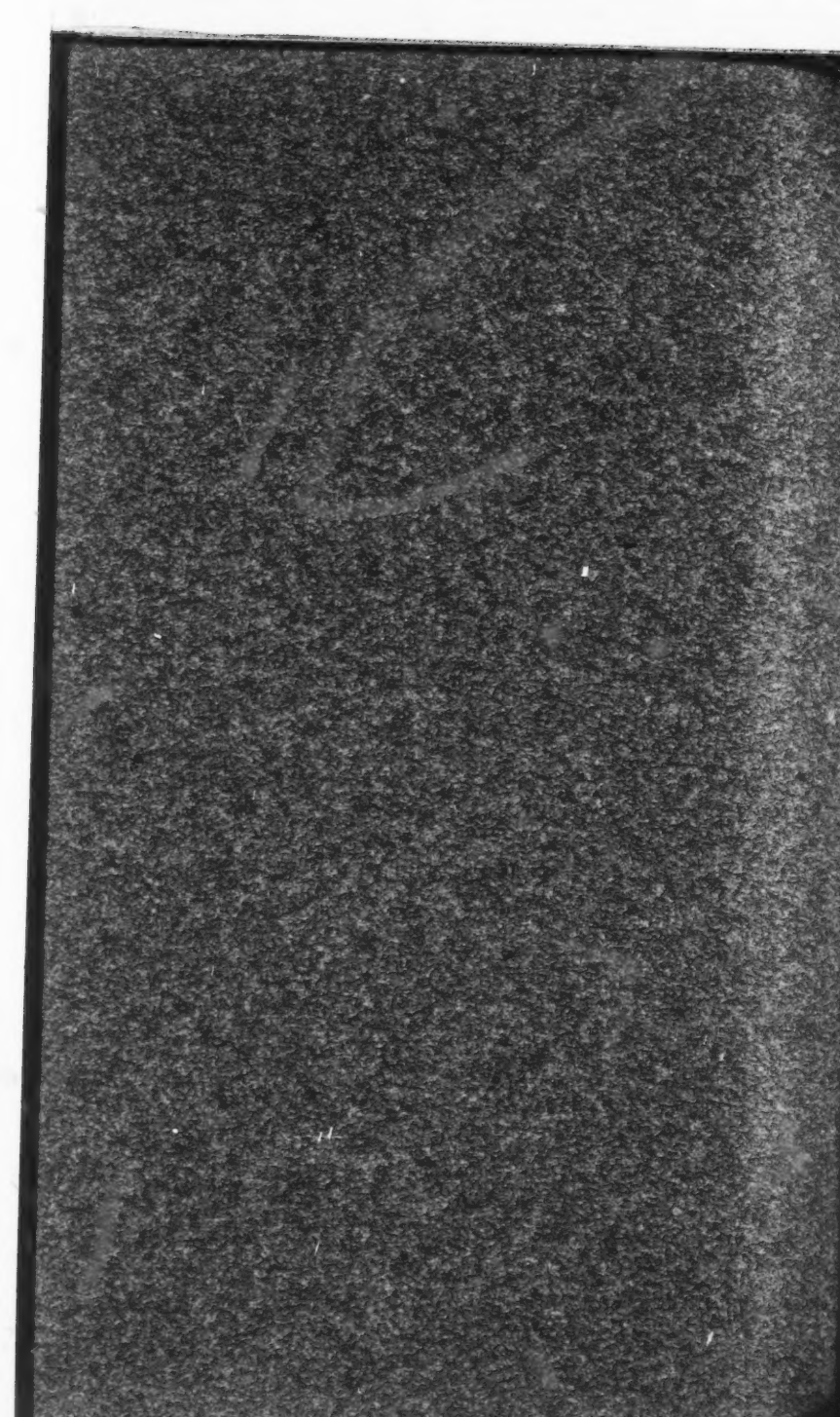

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STATEMENT.

On July 24th, 1905, plaintiffs in error filed a petition of mandamus in the Supreme Court of the State of Wyoming against defendant in error, praying for a writ of mandamus commanding him to pay to the Treasurer of The Wyoming Agricultural College certain federal appropriations for the mainte-

nance and support of an agricultural college in the State of Wyoming. The petition (Printed Record, pages 14 to 34, inclusive) sets out the following acts of Congress: First, the act of July 2, 1862, granting certain lands or land scrip to the several states, and providing that the proceeds thereof shall be invested to constitute a perpetual fund, and the interest inviolably appropriated by each state taking or claiming the benefit of the act "to the endowment, support and maintenance of at least one college whose leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the Legislatures of the states may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life." (12 Stat. L., 503-505; 22 Stat. L., 484; 2 Fed. Stat. Ann., pp. 850-853.) Second, the act of August 30, 1890, providing that there shall be appropriated, out of any money arising from the sales of public lands, to each state and territory "for the more complete endowment and maintenance of colleges for the benefit of agriculture and the mechanic arts" then established or which might be thereafter established, "in accordance with an act of Congress, approved July second, eighteen hundred and sixty-two, the sum of fifteen thousand dollars for the year ending June thirtieth, eighteen hundred and ninety, and an annual increase of the amount of such appropriation thereafter for ten years by an additional sum of one thousand dollars over the preceding year, and the annual amount to be paid thereafter to each state and terreitory shall be twenty-five thousand dollars to be applied only to instruction in agriculture, the mechanic arts, the English language and the various branches of mathematics, physical, natural and economic science, with special reference to their applications in the industries of life, and to the facilities for such instruction." (26 Stat. L., 417; 2 Fed. Stat. Ann., 854-857.) Third, the act of March 2, 1887, entitled, "An act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an act approved July second, eighteen hundred and sixty-two, and of the acts supplementary thereto." (24 Stat. L., 440; 1 Fed. Stat. Ann., 9.)

The petition then proceeds to allege the establishment of the relator, the Wyoming Agricultural College, by an act of the Wyoming Legislature approved January 10, 1891 (said act set out in full in Printed Record, pp. 22-26); the location of the college at the Town of Lander, Fremont County, Wyoming, by a vote of the people, to whom the question of location had been submitted as provided in said act, at the general election held in 1892; the appointment soon thereafter of trustees for said college, by the Governor, by and with the advice and consent of the Senate, as required by said act; the organization of the board of trustees by the election of a president, secretary and treasurer thereof; the appointment of new trustees from time to time as required by law, and that such trustees duly appointed have qualified and are acting as such.

Then follow certain allegations in substance as follows: That on June 17th, 1903, one Phillip Wisser, a resident of the County of Fremont, State of Wyoming, departed this life, having by his last will and testament devised and bequeathed to said college, located at the Town of Lander, all his property, both real and personal, after payment of debts, etc., which property was, upon the settlement of the estate of said decedent, by the District Court in and for said Fremont County, on December 17, 1904, distributed, in accordance with the terms of said will, to the persons then constituting the board of trustees of said college "in trust for the Wyoming Agricultural College, which is located at Lander, in the County of Fremont, in the State of Wyoming, to be expended by such trustees and their successors in office for the benefit of the Wyoming Agricultural College at Lander, in the County of Fremont and state aforesaid, according to the terms of said last will"; that said estate so distributed consisted of $17,341.88 in money, and certain real estate described in the petition; that after receiving the money coming to them from said estate as aforesaid, the trustees of the college, on January 30th, 1905, expended nine thousand dollars thereof in the purchase of a site for the college, and an agricultural experiment station, at and within the corporate limits of said Town of Lander, said site consisting of one hundred and sixty acres of land; that said site was then and there designated by said trustees as the site and location of and for the Wyoming Agricultural Col-

lege and Experiment Station in connection therewith; that after the purchase of the site aforesaid, and on January 31st, 1905, the trustees of said college duly convened at Lander and adopted resolutions providing for opening said college, and thereby determined that the school year of the college should consist of three terms of three months each, the first three terms to commence respectively February 1, May 1, and August 1, 1905; that pursuant to such resolutions the college was opened for the enrollment and instruction of pupils on the site aforesaid, February 1, 1905, the board having at its meeting on the preceding day appointed and hired "professors of instruction in English, History, Civil Government, Mathematics, Agriculture, Horticulture, and Irrigation," and that on February 2, 1905, a president and faculty for the institution, and a staff for the Experiment Station, were appointed and elected.

It is further alleged that said college has never received any appropriations, or other financial support from the State of Wyoming, or from any other source, except from the estate of Phillip Wisser as aforesaid; that the college is entitled to receive the appropriations under the acts of Congress aforesaid, and that it is the only institution in the state whose leading object is instruction in agriculture and the mechanic arts and, therefore, the only institution in said state entitled to receive the same; that the same have heretofore been paid to the University of Wyoming, which is located at Laramie; that said University is not an institution whose leading object is instruction in agriculture and the mechanic arts and is not and never has been eligible to accept and expend said federal appropriations, and that the payments of said federal appropriations to it as aforesaid have each and all been in direct violation of said acts of Congress; that said University has accepted and received from the government appropriations under said acts of Congress aggregating five hundred and fifty-five thousand dollars, and has graduated but two students from its department of agriculture and mechanic arts.

The passage of an act of the Legislature of Wyoming, approved February 7, 1905 (this act is set out in full, Printed Report, pp. 30, 31), is then alleged, which purports to repeal the act of January 10, 1891, and all laws establishing the relator college, and said repealing act is alleged to be unconstitutional, null and

void, for the reason that it impairs the obligations of a contract and divests vested property rights.

It is further alleged that the defendant in error (respondent below) has in his possession the sum of twenty-five thousand dollars, derived from the United States for the year 1905, under the act of August 30, 1890, aforesaid, to which sum the relator college is legally, equitably and justly entitled; that said college requires said amount of money in the maintenance and support of its department of instruction in agriculture and mechanic arts; that said respondent refuses to recognize its right to said fund, but asserts that the same belongs to said University, and will pay the same to said University, unless otherwise directed by said court; that said respondent also has in his possession, or loaned under his direction, permanent funds amounting to $20,415.34 derived from sales of lands and land scrip under said acts of Congress; that the relator college is legally entitled to all interest upon said funds, but said respondent denies the relator's right thereto, and asserts that the same belongs to said University, and, unless otherwise directed by said court, will pay the same to said University.

The prayer of the petition is that said respondent pay to the treasurer of the relator college each and all of the above named sums of money.

An alternative writ of mandamus was issued in accordance with the prayer of the petition (Printed Record, pp. 35, 36), to which writ the respondent failed to answer but interposed a demurrer to the petition, stating three grounds, viz.: (1) That the petition does not state facts sufficient to constitute a cause of action. (2) That the Wyoming Agricultural College is without legal capacity to sue. (3) That the trustees of said college are without legal capacity to sue. (Printed Record, page 38), which demurrer was sustained (Printed Record, page 70). The plaintiffs in error elected to stand upon their petition and alternative writ, and declined further to plead, and thereupon the court entered a final order dismissing the petition and alternative writ at the cost of relators, to which order, judgment and decree the relators duly excepted. (Printed Record, pages 70, 71).

The written opinion of the court will be found in Printed Record, pages 39 to 69, inclusive.

ERRORS ASSIGNED.

The errors assigned by the plaintiff in error (Printed Record, pages 3 to 6 inclusive), are as follows:

First. "The Supreme Court of the State of Wyoming erred in rendering a decision in said cause, sustaining the demurrer of the defendant to the petition and alternative writ of the plaintiffs."

Second. "The Supreme Court of the State of Wyoming erred in each and all its findings of law in its said decision and opinion, sustaining said demurrer, as aforesaid."

Third. "The Supreme Court of the State of Wyoming erred in entering final judgment in said cause, dismissing the plaintiffs' petition and alternative writ, at the cost of the plaintiffs."

Fourth. "The Supreme Court of the State of Wyoming erred in holding and deciding that Chapter Ten of the Session Laws of Wyoming for 1905, in words and figures following, to-wit:

"CHAPTER 10.

"REPEAL OF WYOMING AGRICULTURAL COLLEGE.

"*Be it Enacted by the Legislature of the State of Wyoming*:

"That Chapter 92 of the Session Laws of the State of Wyo-" ming of the years A. D. 1890-1891, being an act entitled 'An " Act providing for the establishment of "The Wyoming Agri-" cultural College," and to provide for the location and govern-" ment of the same, and for the instruction to be therein given, " and for other purposes,' approved January 10th, A. D. 1891; " and also so much of said act as is embraced in Sections 504 to " 519, both inclusive, of Chapter 2, Title 6, of the Revised Stat-" utes of Wyoming, 1899, entitled 'The Wyoming Agricultural " College,' be and the same are hereby repealed."

"This act shall take effect and be in force from and after its " passage."

"Approved February 7th, A. D. 1905."

was valid. The validity of said law was denied and drawn in question by the plaintiffs on the following grounds, to-wit:

a. That the said repealing act is unconstitutional and void, because it impairs the obligations of contracts and divests vested property rights and is in contravention of Section 10 of Article I of the Constitution of the United States.

b. That the said repealing act is illegal, null and void, because it violates the contract and agreement entered into between the State of Wyoming and the United States, in the Act of Admission of the State of Wyoming, wherein, by Section 10 of said act, in words and figures following, to-wit:

"Section 10. That 90,000 acres of land, to be selected and located as provided in Section 4 of this act, are hereby granted to said state for the use and support of an agricultural college in said state, as provided in the acts of Congress making donations of lands for such purpose,"

the State of Wyoming accepted donations of land for the Wyoming Agricultural College.

c. That the said repealing act is illegal, null and void, because it attempts to destroy the only college in the State of Wyoming, whose leading object is instruction in agriculture and the mechanic arts and is therefore in contravention of the provisions of the Acts of Congress providing for the support and maintenance of Agricultural Colleges, to-wit, the Act of July second, 1862, as amended by Act of March third, 1883; the Act of August thirtieth, 1890, and the Act of March second, 1887.

Fifth . The Supreme Court of the State of Wyoming erred in holding and deciding that The Wyoming Agricultural College and the trustees thereof were not legally entitled to receive the federal appropriations for the support of an agricultural college in the State of Wyoming, under the said federal statutes in such case made and provided.

Sixth. The Supreme Court of the State of Wyoming erred in holding and deciding that the defendant was legally and lawfully under said Acts of Congress, disbursing said federal appropriations for the support and maintenance of an agricultural college, to the University of Wyoming, the plaintiffs claiming in their said petition, and it being admitted by the defendant's demurrer, that the University of Wyoming is not an institution whose leading object is instruction in agriculture and the mechanic arts.

Seventh. The Supreme Court of the State of Wyoming erred in holding and deciding that the University of Wyoming is

an institution whose leading object is instruction in agriculture and the mechanic arts.

Eighth. The Supreme Court of the State of Wyoming erred in holding and deciding that the University of Wyoming is legally entitled to receive the federal appropriations claimed by plaintiffs in said cause.

Ninth. The Supreme Court of the State of Wyoming erred in holding that the plaintiffs were not legally entitled to receive the federal appropriations for the support and maintenance of an agricultural college in the State of Wyoming, as claimed in their said petition.

Tenth. The Supreme Court of the State of Wyoming erred in holding that Section 499 of the Revised Statutes of Wyoming, in words and figures following, to-wit:

"The University of Wyoming having been designated by the Secretary of the Interior as the proper institution to receive and expend the moneys appropriated by an Act of Congress approved August thirtieth, eighteen hundred and ninety, entitled 'An Act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an Act of Congress approved July second, eighteen hundred and sixty-two,' until such time as there may be an agricultural college established in this State, separate and apart from said University of Wyoming, assent is hereby given to all the terms and conditions of the said Act of Congress and the grants of money authorized and made by said Act are hereby assented to and accepted by the State of Wyoming. The Treasurer of the State of Wyoming is hereby designated as the proper officer to accept and receive said moneys so granted by said Act of Congress, and to disburse the same in accordance with the provisions of Section two of the said Act of Congress,"

was valid. The validity of said last named statute was denied and drawn in question on the ground that it was repugnant to the laws of the United States providing for the maintenance and support of agricultural colleges, to-wit, the Act of July second, 1862, as amended by Act of March third, 1883; the Act of August thirtieth, 1890, and the Act of March second, 1887.

Eleventh. The Supreme Court of the State of Wyoming erred in holding and deciding that the defendant, William C. Irvine, as Treasurer of the State of Wyoming, was legally and lawfully, under said Section 499 of the Revised Statutes of Wyoming, disbursing the federal appropriation for the support of an agricultural college, to the University of Wyoming.

ARGUMENT.

FIRST. *The Wyoming Agricultural College is a corporation with capacity to sue, and its Trustees have corporate powers, among them the right to sue.*

"It is not necessary to the conclusion that a body exercising corporate powers is in the rightful exercise of them, that the body should have been declared a corporation by the legislature in expressed words. As hereafter seen, a corporation may exist by legislative recognition; and for stronger reasons, where there is a statute conferring upon an existing body powers which are appropriate to corporations alone, it is a sound conclusion that it makes it a corporation."

Cyclopedia of Law and Procedure, Vol. 10, 202, and cases there cited.

Every corporation, private or municipal, without regard to the end of which it is created, possesses, in the absence of language expressly restrictive, powers which have been found necessary to sue and be sued.

10 Cyclopedia of Law and Procedure, page 1098.

In general it may be said that the power to sue and be sued is, by the principles of the common law, an incident of every corporation.

The whole question in such cases is whether the party suing or being sued is indeed a corporation.

10 Cyclopedia of Law and Procedure, page 1337 and cases cited in note.

"A corporation may be formed in any manner that a state sees fit to adopt, and when the highest court of the state decides that, by certain legislation the corporation has been created, such decision concludes not only the court of the state but also those of the United States. It is a matter over which we have no review, and in respect to which the decision of the state court is final. If it were an open question, it would be difficult to avoid reaching the same conclusions. By the act of 1869 this prescribed portion of Shelby county is authorized to issue bonds in subscribed stock. The bonds when issued were not the bonds of Shelby county or of the individual taxpayers; and still there must be some debtor. That debtor is this portion of Shelby county giving the power to issue bonds in creating indebtedness, is the creation of entity with power to act, and if this entity has power to create a debt it becomes subject to suit. That this entity is not in terms named 'Corporation' is not decisive. It is enough that an artificial entity is, though not named, a corporation entity, and as well said by the Court of Appeals, simply designates who shall act for this corporation entity and give it a name. As a corporate entity, it issued bonds and subscribed to stock."

Hancock vs. Louisville Railroad Co., 145 U. S., 415.

"The Board of Directors of the University of Oregon are a corporation, although not specifically designated as such. The capacity and power to take conveyances of land and hold and dispose of them for the use and benefit of the University according to the various and diverse trusts imposed upon them by their donors, could not belong to said board unless incorporated. It is true the legislature has not declared the trustees to be a corporation in express terms but this is not essential."

Dunn et al. vs. State University, 9 Oregon, 361. Angel and Ames on Corporations, Section 46.
Thomas vs. Dakin, *22* Wend., 70.
In re Herman Royer, deceased, 44 L. R. A., 364 (Cal.)

"The implied powers of a corporation are those which naturally arise from the nature of the business, thus, a corporation has implied power to buy, hold and sell necessary real estate and other property in its corporate name, and to sue and be sued in that name."

First Cook on Corporation, 5th Edition, page 10.

"The right to sue and be sued is one of the inherent powers of corporations."

1st Blackstone's Commentaries, *278*.

The act providing for the establishment of the Wyoming Agricultural College contains the following provisions:

"Section 510. Para. 6. The said Board of Trustees shall have power to take and hold for the use and benefit of said Agricultural College any real or personal estate and to dispose of the same in such manner as they may deem most conducive to the interests of said Agricultural College."

"Section 515. In the management and application of any property, real or personal, granted, devised, or bequeathed to the use of said Agricultural College, or the proceeds thereof, the Trustees shall conform to the will and direction of the donor thereof, if any such directions shall have been connected with such grant, devise, bequest or donation."

Thus it will be seen that said Trustees were vested with absolute power to acquire, hold and dispose of real and personal property, and the right to sue and be sued is necessarily implied.

SECOND. *The petition in this cause states facts sufficient to constitute a cause of action.*

A State official may be compelled by the writ of mandamus to perform a ministerial duty.

State vs. Herd, 18 Southern, 1746.
State vs. Jumer, 30 (La.) Ann., 863.
Marbury vs. Madison, 1st Cranch, 137.
Wendall vs. United States, 12 (Peters), 60.
Board of Liquidation vs. McComb, 92 U. S., 541.
High on Extraordinary Legal Remedies, Secs. 10 and 105.
State vs. Gamble, 13 (Fla.), 9.
Bryan vs. Cattell, 15 (Ia.), 538.
Turner vs. Maloney, 13 (Cal.), 621.
State vs. Herd, 47 (La.) Ann., 1679; 18 Southern, 746.
United States, Goodrich vs. Guthrie, 17 Howard, 309.
Brashear vs. Mason, 6 Howard, 692.
Murberry vs. Madison, Cranch, 167.
United States vs. Shurz, 102 U. S., 378.
Butterworth vs. U. S., 112 U. S., 50.
United States vs. Black, 128 U. S., 40.
Cohens vs. Va., 6 Wheaton, 264.

In the specific relief which it affords, a mandamus operates much in the nature of a bill in chancery for specific performance, the principal difference being that the latter remedy is resorted to, for the redress of purely private wrongs, or the enforcement of contract right, while the former generally has this object, the performance of obligations arising out of official station or specifically imposed by law upon the respondent. The object of a mandamus is to prevent disorder from a failure of justice and a defect of police and it should be granted in all cases where the law has established no specific remedy and where in justice there should be one.

High, Extraordinary Legal Remedies, Sec. 1.

A comparison of a writ of mandamus, as now used both in England and America, with a writ of injunction, discloses certain striking points of resemblance. Both are extraordinary remedies, the one the principal extraordinary remedy of courts of equity, the other of courts of law.

High on Extraordinary Legal Remedies, Sec. 6.

Courts can not and will not shun the discussion of a constitutional question when fairly presented, and the case can not be disposed of without considering it.

Cooley on Constitutional Limitations, page 163.

When the officers against whom the writ is sought have clearly manifested a determination to disregard their duty by refusing to perform the act in question, the court is not obliged to wait until the evil is done before granting the relief.

Attorney General vs. Boston, 123 Mass., 460.
Brunswick vs. Dube, 59 Ca., 803.

The fact that the prayer is too broad will not defeat the relator's right entirely, but he will be granted such relief as he is entitled to.

13 Enc. Pl. & Prac., 684.
Iowa Coms. vs. Jackson, 165 Ill., 17.
Satterwhites vs. Stole, 142 Ind., 1.
Ellsworth vs. Borwart, 95 Iowa, 108.
People vs. Queens Co., 142 N. W., 271.
State vs. Crites, 48 St., 142.
Smith vs. Lawrence, 2 S. Dak., 188.
Fisher vs. Charleston, 17 W. Va., 628.

Section 2 of 1890 Morrill law provides as follows:

"Sec. 2. That the sums hereby appropriated to the States and Territories for the further endowment and support of colleges shall be annually paid on or before the 31st day of July of each year by the Secretary of the Treasury, upon the warrant of the Secretary of the Interior out of the Treasury of the United States, to the Territorial Treasurer, or to such officers as shall be designated by the laws of such State or Territory to receive the same, who shall, upon the order of the Trustees of the colleges or the institutions for colored students, immediately pay over said sums to the Treasurer of the respective colleges or other institutions entitled to receive the same, and such Treasurers shall be required to report to the Secretary of Agriculture and to the Secretary of the Interior, on or before the first day of September of each year, a detailed statement of the amount so received and of their disbursements."

Section 499 of the Revised Statutes of Wyoming, designates the State Treasurer as the proper officer to accept and receive the moneys granted by said acts of Congress and directs that he disburse the same in accordance with the provisions of Section 2 of said act of Congress, and this is the only direction in said statutes relative to said officer's disposition of said Morrill fund.

Thus it will be seen that the State Treasurer in receiving and disbursing said funds acts as the agent of both the State and the Government and in a purely ministerial capacity.

The act providing for the establishment of the Wyoming Agricultural College is in the nature, and has the full force and effect of an expressed direction by the Legislature to said Treasurer to pay said Morrill appropriation to said Agricultural College when the same shall be located by a vote of the people; especially so when construed in connection with said Section 499 of the Revised Statutes, which limits the University's rights to said funds "until such time as there may be an Agricultural College established in this State separate and apart from said University of Wyoming"; and construed further in connection with the express limitations and directions contained in the act of Congress itself defining the kind of educational institutions entitled to said appropriation, and directing the State Treasurer to turn said appropriations over to said beneficiary.

It is alleged in the petition and admitted by the demurrer that the principal object of the University is not now and never has been instruction in agriculture and the mechanic arts; on the face of the petition the Wyoming Agricultural College is clearly entitled to said appropriation and to the issuance of the writ prayed for in this case.

It will be observed with reference to the Morrill fund that while the State is burdened with some of the responsibilities of a Trustee it is not vested with any of the power or discretion of an ordinary Trustee, except the possible discretion, where there are two educational institutions in the State eligible to receive said funds, to apportion said funds between said institutions.

But where there is only one institution in the State whose principal object is instruction in agriculture and the mechanic arts, the Legislature has no possible discretion or control over said funds except to see that they are paid. The fund is paid by the Government direct to the State Treasurer, who is directed to immediately pay over said funds upon the order of the Trustees of the colleges to the treasurer of the respective colleges or other institutions entitled to receive the same, and further directs that such treasurer shall be required to report to the Secretary of Agriculture and to the Secretary of the Interior on or before the 1st day of September of each year a detailed statement of the amount so received and of its disbursement, thereby impressing a trust in favor of the Government on said funds even in the hands of the treasurers of the colleges.

We are unable to conceive how this can be construed as an appropriation to the State; as a matter of form the appropriation is made to the State for the purpose of segregating the general fund created by said act of Congress, among the several States; but the special provisions and limitations contained in the act itself and the manner in which the fund is paid, and the control which the Government assumes over it after it has been paid, clearly establish a gift to the College and not to the State; under the most liberal construction of this act of Congress, the State could only be regarded as a naked trustee and the college the unlimited beneficiary of said funds.

In this connection, we desire to draw the attention of the Court especially to the following fact: That the position of Wyo-

ming with respect to the agricultural funds is entirely different to the position of the older States, with respect to such funds, in this, that when the Federal Act was passed granting the agricultural funds, the older States' Constitutions had already been adopted, and had no reference to such fund, neither had the act of admission of the older States any reference to such funds, and, therefore, these funds were donated by the Federal Government to the older States, subject to distribution in accordance with any law passed by their Legislatures. The position of Wyoming with respect to said funds is that its Constitution and its admission took place subesquent to the passage of the Federal Act, and the State of Wyoming is bound by the terms of the contract with respect to said funds, created by its Constitution and its Act of Admission, and the same can only be disposed of in accordance with the terms of such contract, which, as we have shown in this brief, must go to the college whose principal object is the teaching of agriculture and the mechanic arts; and, as we have already shown, it is clear that the Agricultural College Act was passed and the Agricultural College established in pursuance of this contract and in order to utilize said funds by a compliance with the Statutes of the United States; and that said College was established under a constitutional provision, by vote of the people. The Legislature, having performed this duty, has exhausted its power in the premises and the act is irrevocable by them.

THIRD. *The Legislature of Wyoming has not the power to single out and repeal the charter of a particular corporation, in the absence of wilful neglect or abuse of its charter.*

Section 1 of Article 10 of the Wyoming Constitution provides:

"Section 1. The Legislature shall provide for the organization of corporations by general law. All laws relating to corporations may be altered, amended or repealed by the Legislature at any time when necessary for the public good and general welfare, and all corporations doing business in this State may as to such business be regulated, limited or restrained by law not in conflict with the Constitution of the United States."

This reservation applies solely to corporations of legislative creation and to amendments and repeals of laws affecting all cor-

porations alike and does not extend to corporations established under a constitutional provision by the vote of the people. The right to repeal the charter of a private corporation solely of legislative creation would, we believe, be subject to the limitation that such repeal shall not impair the obligations of contracts or divest vested property rights. It could not be made to apply to a special charter like that of the Wyoming Agricultural College in any event unless such right were reserved in the charter itself.

The Wyoming Agricultural College was not and could not be a burden to the State, for there is no obligation on the part of the State to support it. The public welfare could never demand that an educational institution of this kind should be destroyed and its private funds confiscated by the State. But in any event, this reservation to repeal the corporation laws must be construed in the light of Section 2 of Article 10 of said Constitution, which provides:

"Section 2. All powers and franchises of corporations are derived from the people and are granted by their agent, the government; for the public good and general welfare, and the right and duty of the State to control and regulate them for these purposes is hereby declared. The power, right and privileges of any and all corporations may be forfeited by wilful neglect or abuse thereof. The police power of the State is supreme over all corporations as well as individuals, which does not give the Legislature power to single out and repeal the charter of a particular corporation in the absence of wilful neglect or abuse of its charter."

The effect of this reservation to the Legislature to alter, amend or repeal a charter, has been construed by the Supreme Court of the United States in several cases, as follows:

"A power reserved to the Legislature to alter, amend or repeal a charter, authorizes it to make any alteration or amendment of a charter granted subject to it, which will not defeat or substantially impair the object of the grant, or any rights vested under it and which the Legislature may deem necessary to secure either that object or any public right."

N. W. & N. E. R. Co. vs. Bristol, 151 U. S., 567.
Looker vs. Maynard, 179 U. S., 52.

Vested rights cannot be destroyed or impaired under such a reserved power.

Holyoke Company vs. Lyman, 15 Wal. (U. S.), 519.

These are the acknowledged limits to the exercise of this reserved power where it trenches upon vested rights or rights of property of the corporation.

When under power in a charter rights have been acquired and become vested, no amendment of the charter can take away the property or rights which have become vested under the legitimate exercise of the powers granted.

Miller vs. the State, 15 Wal. (U. S.), 486.
Commonwealth vs. Essex Co., 13 Gray, 239.
Durfee vs. Old Colony Railroad, 5 Allen, 236.
Roxbury vs. Boston Prov. Railroad, 6 Cushing, 424.

In Detroit vs. Howell Plank Road Co., 43 Mich., 140, 147, the Supreme Court of Michigan, in considering this subject, uses similar language. Speaking by Mr. Justice Cooley, it said:

"But for the provision of the Constitution of the United States which forbids impairing the obligation of contracts, the power to amend or repeal corporate charters would be ample without being expressly reserved. The reservation of the right leaves the State where any sovereignty would be, if unrestrained by express constitutional limitations and with the powers it might then possess. It might, therefore, do what it would be admissable for any constitutional government to do when not thus restrained, but it could not do what would be inconsistent with constitutional principles. And it cannot be necessary at this day to enter upon a discussion in denial of the right of the government to take from either individuals or corporations any property which they rightfully may have acquired. In the most arbitrary times such an act was recognized as pure tyranny, and it has been forbidden in England ever since Magna Charta; in this country always."

It is immaterial in what way the property was acquired, whether by labor in the ordinary vocations of life, by gift or descent, or by making profitable use of a franchise granted by the State.

FOURTH. *Under the Constitution and Statutes of Wyoming, the University of Wyoming has no vested interest in the Morrill and Hatch appropriations.*

Section 15 of Article 7 of the Wyoming Constitution provides as follows:

"The establishment of the University of Wyoming is hereby confirmed and said institution, with its several departments, is hereby declared to be the University of the State of Wyoming. All lands which have been heretofore granted or which may be granted hereaftr by Congress unto the University as such, or in aid of instruction to be given in any of the departments, with all other grants, donations or devices for said University, or for any of its departments, shall vest in said University and be exclusively used for the purposes for which they were granted, donated or devised."

This provision of the Constitution cannot by the most strained construction be construed to give to the University or its Agricultural Department a vested right, title and interest in the "Morrill" and "Hatch" funds. It plainly has reference to the grant of lands in the foregoing Act of Congress to the State for University purposes, and future donations made specifically to the State for University purposes.

The provisions of the Hatch and Morrill laws negative the idea that they are given for the benefit of the University, or that said institution shall acquire a vested and permanent right and title to said appropriations.

It is important to observe that the University, although organized in 1886, at the time of the adoption of the Constitution, was not receiving or making any claim to the Hatch or Morrill funds, and never did receive or lay any claim thereto until after the passage of the act providing for the establishment of the Wyoming Agricultural College in 1891.

The legislative construction placed on the tenure of the University to these funds is of almost controlling force. In all the legislation in regard to said funds, the right of the University as the recipient thereof is regarded as a transient one, to continue only until a separate agricultural college should be established. Thus in Section 499 of the Revised Statutes of Wyoming the right of the University to receive said funds is limited by the following language:

"Until such time as there may be an agricultural college established in this State, separate and apart from said University of Wyoming."

Section 520 of the Revised Statutes of Wyoming, as amended by Chapter 14, of the Session Laws of 1901, and again amended by the Session Laws of 1903, contains the following language:

"During such time as the University of Wyoming shall be and remain the recipient of the funds donated by the United States Government to the State Under the Act of Congress of March 2, 1887, establishing agricultural experiment stations and the Act of Congress of August 30th, 1890," etc.

Construing this constitutional provision also in the light of the Act of Admission, which distinctly recognizes the University and the Agricultural College, the conclusion is unavoidable that the University has acquired thereby no exclusive, permanent or vested right, title or interest in and to said Morrill and Hatch appropriations.

FIFTH. *The Wyoming Agricultural College is a private corporation.*

A corporation may be private and yet the act or charter contain provisions of a purely public character introduced solely for the public good. A public corporation is one that is created for political purposes with political powers to be exercised for purposes connected with the public good in the administration of civil government where the whole interests belong to the government.

State vs. Carr, 111 Ind., 355; 12 N. E., 318.
Downey vs. Ind. State Bd. Agriculture, 129 Ind., 443; 12 L. R. A., 664.
Bd. of Educ. vs. Bakewell, 122 Ill., 339; 10 N. E., 378.
Trustees Part. Col. vs. Woodward, 4 Wheaton, 523.
City of Louisville vs. Univ. of Louisville, 54, 642.
Allan vs. McKean, I Summer (Maine), 276.
Regents Univ. Md. vs. Williams, 9 Gill & John. (Md.), 365.
U. S. Bank vs. Planters' Bank (Ga.), 9 Wheaton, 907.
State Bank S. C. vs. Gibbs, 3 McCord, 226.
Sclinas vs. State Ag. Col., 60 Vt., 249.
Bd. of Educ. vs. Greenbaum, 39 Ill., 610.
Cleveland vs. Stewart, 3 Ga., 283.
Trustees of N. C. vs. Fay L. Murphy, N. C., 81.

SIXTH. *Public corporations are regarded as private corporations with reference to their private property.*

"It will hardly be contended that even in respect to public corporations the legislative power is so transcendent that it may at its will take away the private property of the corporation or change the uses of its private funds acquired under the public faith."

Trust. Dart. Col. vs. Woodward, 4 Wheaton, 523.

Even municipal corporations are deemed private corporations with respect to the ownership and control of private or corporate property, as distinguished from property devoted strictly to public or governmental uses.

Bullmaster vs. St. Joseph, 70 Mo. App., 60.

Whitfield vs. Carrolton, 50 Mo. App., 98.

Milburn vs. South Orange, 55 N. J. L., 254; 26 Atl., 75.

Bailey vs. N. Y., 3 Hill, 531; affirmed in 2 Dem. (N. Y.), 433.

Bloodgood vs. Mohawk R. R. Co., 18 Wend. (N. Y.), 931; Am. Dec., 313.

Oliver vs. Worcester, 102 Mass., 489; 3 Am. Rep., 485.

McCauley vs. New York, 67 N. Y., 60.

Memphis vs. Kimbrough, 12 Heish (Tenn.), 133.

Sayd vs. New York, 5 N. Y., 369; 55 Am. Dec., 347.

Bailey vs. Mayor, ek sf., N. Y., 38.

Rochester, etc., Co. vs. Rochester, 53 Am. Dec., 316.

Holland vs. San Francisco, 7 Cal., 376.

Stackinghouse vs. Lafarette, 26 Ind., 17.

Bunkmeyer vs. Evansville, 29 Ind., 187.

People vs. Mayor, etc., of N. Y., 62 N. Y., 164.

Same vs. same, 32 Barb., 116.

Town of Milwaukee vs. City of Milwaukee, 12 Wis., 111.

In the last quoted decision (12 Wis., 111) the Court said:

"The difficulty about the question is, to distinguish between the corporation as a civil institution or delegation of merely political power, and as an ideal being, endowed with the capacity to

acquire and hold property for corporate purposes. In its political or governmental capacity, it is liable at any time to be changed, modified or destroyed by the Legislature; but in its capacity of owner of property designed for its own, or the exclusive use and benefit of its inhabitants, its vested rights of property are no more the subject of legislative interference or control, without the consent of the corporators, than those of a merely private corporation or person. Its rights of property, once acquired, though designed and used to aid it in the discharge of its duties as a local government, are entirely distinct and separate from its powers as a political or municipal body. It might sell its property, or the same might be lost or destroyed, and yet its powers of government would remain. In its character of a political power, or local subdivision of government, it is a public corporation, but in its character of owner of property, it is a private corporation, possessing the same rights, duties and privileges as any other. This distinction is clearly laid down and established in the case of Bailey and others vs. The Mayor, etc., of the City of New York, 3 Hill, 531, and authorities there cited. The inviolability by legislative interposition of the rights and franchises of a private corporation, in cases where there is not, by its charter, or the Constitution of the State by which it is granted, a reservation of power to repeal or modify, is demonstrated and established in the case of Dartmouth College vs. Woodward, 4 Wheat., 518, by a force of reasoning and power of argument, to the strength and clearness of which nothing can possibly be added. It was there held that the charter of such a corporation was a contract within the meaning of the first subdivision of Section 10 of Article 1 of the Constitution of the United States, which declares that no State shall pass any laws impairing the obligation of contracts. The same provision occurs in the 12th section of the 1st article of our State Constitution. The reasoning of that case extends as well to the power of the Legislature to interfere with the franchises as the rights of property of such corporation; but it is only with respect to the latter that it can be considered applicable to the question we are now considering. And there it is clearly so. Every argument used goes with equal force to prove that the Legislature has no power to divest a municipal corporation of its property, previously acquired by purchase or otherwise. This want of power depends, not upon the character of the corporation, but upon the nature of the right. The right to repeal or modify is not a right to interfere with vested rights of property. The former may exist without the latter. If the Legislature possessed both, the exercise of one would not depend on the other. How the total repeal of the charter of a municipal corporation, without provision as to the deposition of its property (a circumstance not likely to occur) would affect such prop-

erty, or the rights of its inhabitants, we are not called upon here to decide. It is sufficient that the corporation of the Town of Milwaukee still continues to exist and so long as it does so, it is impossible to make a distinction between its rights of property and those of a corporation merely private. Both are, and ought, in the nature of things, to be equally sacred. In Terrett vs. Taylor, 9 Cranch, 43, the right of a State Government to dispossess a private corporation of its property, was directly passed upon and denied."

SEVENTH. *The Act of the Legislature of Wyoming in 1905 repealing the charter of the Wyoming Agricultural College is in contravention of the compact and agreement entered into between said State and the United States, in the Act admitting said State into the Union.*

The Constitution of Wyoming was adopted by the people at a general election held November 5th, 1889.

It was submitted to Congress and approved by that body at the time the Act of Admission of the State of Wyoming was approved, to-wit, on July 10th, 1890.

The Act of Admission, being the solemn compact between the State and the Government, its terms are of controlling force in construing any dubious provisions of the Constitution of Wyoming.

Section 10 of said Act of Admission is in words and figures following, to-wit:

"Section 10. That 90,000 acres of land, to be selected and located as provided in Section 4 of this act, are hereby granted to said State, as provided in the acts of Congress, making donations of land for such purpose."

Section 11 of said Act of Admission provides as follows:

"Section 11. The following grants of land are hereby made, to-wit:

"To the State of Wyoming: For State, Charitable, Educational, Penal and Reformatory Institutions, 260,000 acres."

Section 8 of said Act of Admission provides:

"Section 8. That the lands granted to the Territory of Wyoming, by the Act of February 18, 1881, entitled, "An act to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming for university purposes," are hereby vested in the State of

Wyoming to the extent of the full quantity of 72 sections to said State, and any portions of said lands that may not have been selected by said Territory of Wyoming, may be selected by the said State; but said Act of February 18th, 1881, shall be so amended as to provide that none of said lands shall be sold for less than $10.00 per acre and the proceeds shall constitute a permanent fund to be safely invested and held by said State and the income thereof be used exclusively for university purposes. The schools, colleges and universities provided for in this act shall forever remain under the exclusive control of the said State, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college or university."

Thus Congress expressly recognizes the University and grants donations for university purposes and expressly recognizes the Agricultural College to be thereafter established in this State and grants to the State 90,000 acres of land for the use and support of same. The congressional mind at this time recognized an Agricultural College in Wyoming separate and distinct from the University and evinced a fatherly interest in its welfare; and the State of Wyoming in accepting the grant for the use and support of an Agricultural College, solemnly obligated itself to establish an Agricultural College, which when established could not be destroyed by the Legislature.

The State of Wyoming further ratifies and reiterates its solemn pledge and obligation contained in the Act of Admission in the following language contained in Section 1 of Article 18 of the Wyoming Constitution:

"Article 18. Section 1. The State of Wyoming hereby agrees to accept the grants of lands heretofore made, or that may be hereafter made by the United States to the State for educational purposes, for public buildings and institutions and for other objects and donations of money, with the conditions and limitations that may be imposed by the act or acts of Congress, making such grants or donations."

EIGHTH. *The Act of the Wyoming Legislature in 1905 repealing the charter of the Wyoming Agricultural College impairs the obligations of a contract and divests vested property rights, and is, therefore, in contravention of the Constitution of the United States and ineffective and void.*

The Act of the Legislature of Wyoming providing for the establishment of the Wyoming Agricultural College (Printed Record, pages 22 to 26) expressly provides that the Trustees thereof shall have the power to take and hold for the use and benefit of the said Wyoming Agricultural College any real or personal estate and to dispose of the same in such manner as they may deem most conducive to the interests of said Agricultural College, and to expend any and all income that may be placed under the control of such board by donations or by law or otherwise in such manner as shall best promote the interests and property of the said institution, and further provides that in the management and application of any property, real or personal, granted, devised or bequeathed for the use of said Agricultural College, or the proceds thereof, the Trustees shall conform to the will and directions of the donor thereof, if any such directions shall have been connected with such grant, devise, bequest or donation, thereby investing said institution in these particulars with powers strictly of a private character and holding out a shining guaranty of good faith and inviolability to those whom local pride or interest might prompt to bestow valuable gifts and financial assistance upon said institution, and thereby creating—especially after private donations have been made specifically to said institutions as located, on the faith of the character, with express directions as to how said donations sould be expended—a binding contract between the State on the one hand and said institution and said donors on the other, based upon a valuable consideration; a contract on the faith of which real and personal property has been donated to said institution; and that, therefore, said pretended repealing act of 1905 is unconstitutional and void as being in contravention of the Constitution of the United States, which provides that "No State shall pass any * * * law impairing the obligation of contracts."

The effect of this constitutional prohibition early became a subject of consideration in the Supreme Court of the United States. Out of it grew the decision in perhaps the most famous case ever decided in any Court of the United States, namely, the Dartmouth College case. That case involved questions somewhat similar to those under consideration. The facts in that case were in many rspects similar to the questions here involved. It ap-

pears in that case that in 1769 a charter was granted by the English Crown to twelve persons, incorporating them under the name of "Trustees of Dartmouth College"; that, under this grant, the Trustees were to govern the college and fill all vacancies which might be created in their own number; that, after the War of the Revolution in 1816, the Legislature of New Hampshire passed an act which provided, among other things, for an increased number of Trustees, provided for their appointment by the Governor, created a Board of Overseers, and purported to make other important changes in the organic law of the institution. Chief Justice Marshall, in his opinion, says:

"The points for consideration are: (1) Is this contract protected by the Constitution of the United States? (2) Is it impaired by the acts under which the defendant holds?"

These questions he considers in a most elaborate opinion, covering more than forty pages of the printed report, which is entirely too long to be even quoted or recapitulated here. A few quotations, however, will show the substance of the decision and the applicability of it to the questions here under consideration:

"The parties in this case differ less on general principles, less on the true construction of the Constitution in the abstract than on the application of those principles to this case, and on the true construction of the charter of 1769. This is the point on which the case centrally depends. If the act of incorporation be a grant of political power, if it create a civil institution to be employed in the administration of the Government, or if the fund of the college be public property, or if the State of New Hampshire as a government be alone interested in these transactions, the subject is one in which the Legislature of a State may act according to its own judgment, unrestrained by any limitation of its power imposed by the Constitution of the United States, but if this be a private eleemosynary institution, endowed with the capacity to take property for objects unconnected with government, whose funds are bestowed by individuals on the faith of the charter; if the donors have stipulated for the future disposition and management of those funds in the manner prescribed by themselves, there may be more difficulty in the case."

The Court in its opinion distinguishes corporations into public corporations and private corporations. Public corporations are those created for public, governmental purposes, and are to be regarded as merely the agencies of the State in the adminis-

tration of civil government. The charters of such corporations may, under certain limitations, be repealed and such corporations abolished. Private corporations are established for private purposes and, unless the power to revoke their charters is expressly reserved in the acts creating them, the power of revocation does not exist. It appeared in the Dartmouth College case that the funds for the administration of the college were derived entirely from private sources. The State of Wyoming has never made any contribution toward the fund of the Wyoming Agricultural College, nor has it bound itself in its legislative enactments to furnish financial aid or assistance to said College. On the contrary, the only funds which it has are those which it derived from the estate of Phillip Wisser, deceased, or to which it has become entitled under the legislation and the statutes known as the Morrill and Hatch laws. But even had the State of Wyoming made appropriations and contributed funds for the administration of this school, that fact would be unimportant, in view of all the other facts and circumstances of this case. Questions similar to these have arisen in some of the other cases hereinbefore mentioned and referred to hereafter, and it will be seen that the fact that the State contributed a portion of the fund was not considered material, and that in those cases—as well as in the Dartmouth College case—the conclusion as reached by the Court after the most careful consideration, that the repeal of such a charter was not within the power of the Legislature. Chief Justice Marshall, in the opinion already quoted, says among other things as one of the grounds for his conclusion:

"Nor could the Legislature have supposed that his 'Doctor Wheelocks' private fund, and those given by others were subject to legislative management because they were applied to the purpose of education.

"The Trustees, in whose care the fund was placed by the contributors, would have been permitted to execute their trust, uncontrolled by legislative authority."

The opinion further says, referring to the right to change charters of public corporations:

"The right to change them is not founded upon their being incorporated, but upon their being the instruments of government, created for its purpose.

"From this view of the charter it appeared that Dartmouth College is an eleemosynary institution, incorporated for the purpose of perpetuating the application of the bounty of donors to the specified objects of said institution; that its Trustees or Governors originally named by the founder and invested with a power of perpetuating themselves; that they are not public officers, nor is it a civil institution participating in the administration of government, but a charity school or seminary of education, incorporated for the preservation of its property and the perpetual application of that property to the objects of its creation.

"According to the theory of the British Constitution, its parliament is omnipotent. To annul corporate rights might shock public opinion, which that Government has chosen to avoid, but its power is not questioned. Had Parliament, immediately after the emanation of this charter and the execution of these conveyances which followed it, annulled the instrument, so that the living donors would have witnessed the disappointment of their hopes, the perfidy of the transaction would have been universally acknowledged. Yet then, as now, the donors would have had no interest in the property; then as now, those who might be the students would have had no right to be violated; then, as now, it might be said that the Trustees, in whom the rights of all were combined, possessed no private, individual, beneficial interest in the property confided to their protection. Yet the contract would at that time have been deemed sacred by all. What has since occurred to strip it of its inviolability? Circumstances have not changed it. In reason, in justice, and in law, it is now what it was in 1769. This is plainly a contract to which the donors, the Trustees and the Crown (to whose rights and obligations New Hampshire succeeds) were the original parties. It is a contract made on a valuable consideration. It is a contract for the security and disposition of property. It is a contract on the faith of which real and personal property estate has been voted to the corporation. It is, then, a contract within the letter of the Constitution, and within its spirit also. The opinion of the Court, after mature deliberation, is that this is a contract, the obligation of which can not be impaired without violating the Constitution of the United States. This opinion appears to be equally supported by reason and by the former decisions of this Court."

Dartmouth College vs. Woodward, 4 Wheaton, pages 518 to 715.

Judge Story, in his opinion in the case, among other things said:

"Public corporations are generally esteemed such as exist for public political purposes only—such as towns, cities, parishes, and counties; and in many respects they are so although they possess some private interest. But, strictly speaking, public corporations are such only as are founded by the Government for public purposes where the whole interests belong also to the Government. If the foundation be private the corporation is private, however extensive may be the uses to which it is devoted."

Dartmouth College vs. Woodward, 4 Wheaton, pages 668 and 669.

But the legislative power over public corporation has its limitation. In the Dartmouth College case, at page 523, the Court says:

"It may also be admitted that corporations for mere public government, such as towns, cities and counties, may in many respects be subject to legislative control. But it will hardly be contended that, even in respect to such corporations, the legislative power is so transcendent that it may, at its will, take away the private property of the corporation or change the uses of its private fund acquired under the public faith. Can the Legislature confiscate to its own use the private funds which a municipal corporation holds under its charter without any default or consent of the corporators? If a municipal corporation be capable of holding devises and legacies to charitable uses (as many municipal corporations are), does the Legislature under our forms of limited government possess the authority to seize upon those funds and appropriate them to other uses at its own arbitrary pleasure against the will of the donors and donees? From the very nature of our Government the public faith is pledged the other way; and that pledge constitutes a valid compact and that compact is only subject to judicial inquiry, construction and abrogation."

Trustees Dartmouth College vs. Woodward, 4 Wheaton, 523.

Another case of interest and authority in this connection is that of *The City of Louisville vs. President and Trustees of the University of Louisville*, 54 Kentucky, 642. It appeared in this case that there existed an institution incorporated by the State of Kentucky, known as the "President and Trustees of the University of Louisville"; that almost the entire endowment of this institution had been received from a quasi public source, namely, from the City of Louisville; that certain individuals had, how-

ever, made small contributions of books and money; that, under this charter, the University was in successful operation during a period of several years. Finally, in the year 1851, an act was passed by the Legislature, which undertook, among other things, not only to make radical changes in the method of the administration of the University, but to transfer its property to another corporation, and to terminate the existence of the University of Louisville. This new corporation, or quasi corporation, was, "The Board of Trustees of the University and Public Schools of Louisville." It was provided by this act, among other things, that the number of Trustees should be changed from eleven to sixteen; that their method of election was changed; that the disposition of the profits and revenues were subjected to a different control, and that the existence of the corporation itself was to be terminated, all merely by legislative enactment.

Subsequently, the Trustees of the new institution filed a petition in the Circuit Court, setting forth the above and other facts, and asking that the President and Trustees of the University of Louisville (the former corporation) be decreed to surrender the said University to the Trustees elected under the new charter. The former Trustees resisted the action, and the case came up for review in the Supreme Court of Kentucky. The opinion in this case was rendered by Chief Justice Marshall of that Court, and in a long and very able examination of the questions involved, he reached the conclusion that the act was unconstitutional; that the first named corporation was a private and not a public corporation; that its charter amounted to a contract between the State and the institution, which was not subject to repeal by legislative act, and that the act which undertook to repeal this charter was in violation of those provisions of the Constitution of the State of Kentucky and of the United States, which prohibited legislation impairing the obligation of contract.

It will, therefore, be seen that this case is, in many respects, closely analagous to the case under consideration. It will be observed that the endowment in this case consisted from funds derived from the City of Louisville, which afforded more ground for argument that it was a public corporation, than exists in the present case, in as much as the funds of the Wyoming Agricultural College have not been at all derived from the State of Wyo-

ming, but from the charity of private donors and from the bounty of the United States.

Chief Justice Marshall, in discussing these questions, among other things, says in his opinion:

"If, as reason and observation prove, and as the authorities referred to assume, a municipal corporation may acquire property which does not thereby belong to the State, and may appropriate it to uses which the State can not defeat or control, it is not, in such acts of acquisition and appropriation, the mere instrument or agent of the government representing and acting for it, and these acts, though done under the authority of law, can not be regarded as the acts of the State or its government, or as a part of its administration, nor can they of themselves impart that character to the object of the appropriation, nor subject it to a legislative power which did not attach either to the objects of the appropriation or the property itself before it was thus appropriated; but such property, so far as the State is concerned, has all the attributes and is entitled to all the protection of private property.

The property conveyed did not become public property and subject to the will of the State by being conveyed to the University unless that institution was itself a mere instrument and agent of the State, and a public corporation. And it being certain that neither the fact of its being incorporated by the State, nor the fact that it was incorporated for the accomplishment of objects of general or public interests, made it a public corporation, subject as such to the public will and judgment; the question still recurs, why must this institution, founded and maintained by means not derived from the State, and in which the State had no other interest and apparently no other control than in any and all other incorporated institutions, be regarded as a public corporation, and in virtue of that name and character be debarred from the protection which the constitution affords to private corporations? Is it because it was incorporated and endowed with a special view of promoting education?

"It is said that the promotion of education is a proper object and duty of government as well as of individuals; and it is argued that the University, having been incorporated and endowed for the promotion of education, and in performance or pursuance of this duty, was an institution created for the purposes of government and to be employed in its administration; and it is contended that on this ground, the corporation was properly subject, under the rules before considered, to the unrestrained power of the State, or at least to the joint and cooperative will of the State and the City of Louisville. But here

again we must discriminate between which created and the city, which, wtih its own property, endowed this corporation. The single act of incorporating the University was not such an assumption by the government of the duty of education as made the corporation its instrument or agent for the performance of that governmental duty. It was only the creation of an instrument to be adopted and employed by others for the purpose of promoting education. And no other power resulted to the State from the nature of the object to be accomplished than such as results in other cases in which a corporation created for purposes of general interest is furnished by the State with powers and capacities, and subjected to contingent duties, but for the means of exercising its powers and performing its duties is left wholly dependent upon contribution or money or property to be made by others, either gratuitously or with a view to profitable return.

"It is conceded, however, that if the State alone on the one side, and the City of Louisville on the other were parties to and interested in the obligations arising from the charter and the donation, they might mutually release or modify these obligations as they might think proper. But the corporation itself created by the charter to receive donations and to appropriate them to purposes of general as well as of local interest, was a party both to the donation and to the grant of the corporate franchise, each of which was consummated by acceptance. And even if the mere acceptance of the franchise, which, if there be no property, or other object of value involved, might impose only a contingent duty, did not bind the faith of the State, to its continuance, the making and acceptance of a substantial donation, whereby property became involved in the charter, and actual and immediate duty were imposed upon a crporation and assumed by it, must, unless the corporation be of such a character and bear such relation to the State as that a donation to it is in effect a donation to the State, have imposed upon the State an obligation to continue the corporation with the capacities which enabled it to receive a gift, and to assume the correlative responsibilities and to perform the corresponding duties. The charter promises this continuance not only to donors to give up on its invitation, but to the corporation itself, which is made the instrument of inviting and receiving the gifts. And as the donation makes a promise binding in favor of the donor, so the assumption and performance of the consequent duty on the part of the incorporated donee is of sufficient consideration to make the promise obligatory in its favor. And, although the corporation, as an artificial being, may have no interest or merit which should raise this obligation in its benefit, it is to be recollected that it is the chosen trustee both of the State and of the donors for accomplishing all the objects of the charter, and the peculiar representative of all who are to re-

ceive the benefit of its faithful execution. Clothed with these interests, whose importance, as admitted by all, and as attested by the charter and by the endowment, deserves the highest consideration, it is not only capable but meritorious party to the contract by which its rights and duties are defined and protected.

"The material question, however, is whether this corporation stands upon the stable basis of a contract protected by the Constitution of the United States, or whether it is a public corporation subject to the unrestrained legislation of the State. We have upon this question subjected it to the tests furnished by the case of Dartmouth College vs. Woodward, according to our understanding of the principles of that case.

"We are of opinion, therefore, upon the ground of authority as well as of reason, that the original charter of the University of Louisville creates a private corporation, which is protected by that clause of the Constitution of the United States which prohibits the enactment of laws impairing the obligation of contracts; and that so much of the amended charter of the City of Louisville, of 1851, as relates to the pre-existing corporation and charter of the University, and vests or professes to vest in a new corporation, or new Trustees, the property and privileges of the original corporation, is in violation of that constitutional provision and consequently void."

City of Louisville vs. President and Trustees of University of Louisville, 54 Ky., 642 et seq.

The case of *Allen vs. McKean*, 1 Sumner (Maine), 276, is another authority of great weight upon the questions here involved. The questions under consideration (which we shall not undertake to enumerate) were in many respects similar to those here involved. The opinion in that case was written by Judge Story and is entitled to great weight. In his opinion he says, among other things:

"But, strictly speaking, public corporations are such only as are founded by the Government for public purposes, *where the whole interest belong to the Government.* If, therefore, the foundation be private, though under a charter of the Government, the corporation is private, however extensive the uses may be to which it is devoted, either by the bounty of the founder or the nature and objects of the institution. For instance, a bank, created by the Government for its own use, whose stock is owned exclusively by the Government for general charity" (meaning as is obvious from the context, a hospital like the navy hospital, or the general marine hospital, established and supported by the

United States out of its own funds and over which it retains the entire government), "but a bank whose stock is owned by private persons" (to it might have been added, partly by private persons and partly by the Government), "is a private corporation, although it is erected by the Government and its objects and operations partake of a public nature."

And it is further stated that no authority exists in the Government to regulate, control or direct a corporation, or its funds, "except where the corporation is, in the strictest sense, public; that is, where its whole interests and franchises are the exclusive property and domain of the Government itself."

That a college, merely because it received a charter from the Government, though founded by private benefactors, is not thereby constituted a public corporation, controllable by the Government, is clear beyond any reasonable doubt. So the law was understood by Lord Holt in his celebrated judgments in Phillips vs. Bury (1 Ld. Raym., R., 8; S. C., 27 M., 346). Lord Hardwicks, in Attorney General vs. Pearse (2 Atk. R., 87) said:

"The charter of the Crown can not make a charity more or less public, but only more permanent than it would otherwise be."

And the decision of the Supreme Court in the case of Dartmouth College vs. Woodward, is direct to the same purpose:

"Nor does it make any difference that the funds have been generally derived from the bounty of the Government itself. The Government may as well bestow its bounty upon a private corporation for charity as upon a public corporation; and its funds bestowed upon the former become irrevocable, precisely in the same manner and to the same extent as if they had been bestowed upon an individual. The Government can not resume a gift once absolutely made to a private person; neither can it resume a like gift to a private corporation. It is true that the Government may reserve such a power in granting a charter, if it chooses so to do; but then the power arises from the very terms of the grant and not from any implied authority derived from the bounties being for general charity, any more than it would from its being for private charity. The Government may reserve a right to revoke at pleasure even its private gifts; but certainly will not imply such right without some positive expression of such an intention. Mr. Chancellor Kent has stated the true principles of law on this subject with his usual clearness and correctness:

"'An eleemosynary corporation,' says he, 'is a private charity constituted for the perpetual distribution of the alms and

bounty of the founder. In this class are ranked hospitals for the relief of the poor, sick and impotent persons, and colleges and endowments established for the promotion of learning and piety, and endowed with property by public and private donor.' If with these principles in view we examine the charter of Boudoin College we shall find that it is a private and not a public corporation. It answers the very description of a private college, as laid down by Mr. Chief Justice Marshall in Dartmouth College vs. Woodward.

"The Commonwealth of Massachusetts was its founder, having given it its original funds, but it is made capable of receiving and has actually received funds from the bounty of private donors. The Legislature was bound by the act. They could not resume their grant, and they could not touch the vested rights, privileges or franchises of the college, except so far as the powers were reserved by the sixteenth section of the act. It (the Legislature) can not intermeddle with its property. It can not extinguish its corporate existence. It can not resume all its property and annihilate all its property and franchises."

It was accordingly held that this act was unconstitutional and void.

Allean vs. McLean, 1 Sumner, 276 et seq.

The facts in the long and intricate case of *Regents of University of Maryland vs. Williams*, 9 Gill & John. (Md.), 365, were, in some respects quite similar to those involved in the matter here under consideration. On account of their length, we can not even undertake to summarize the facts. A few quotations from the opinion of the Court will indicate its holding as to law:

"The corporation or artificial being composed of natural persons for the management of the affairs of the institution (the University) in contemplation of law is private; as much so as the individuals composing it were before the act of incorporation imparted to them an artificial existence, with power to take and hold property in that particular form."

Again:

"A charity may be public although administered by a private corporation, and to hold a corporation to be public because the charity was public, would be to confound the popular with the strictly legal sense of terms, and to jar with the whole current of decisions from the time of Lord Coke, 2 Kent's Co., 273."

The extent of the property or funds it may have acquired by donation or otherwise is not material:

"The capacity, expressly given, to acquire and hold property in perpetuity, for the uses and purposes of its institution, is the same thing, so far as concerns its character as a corporation, as the actual acquisition would be. It appears from the statement of facts that it has been endowed to a small amount by private donations, and no donation that it can derive from the bounty of the State would change its character and convert it into a public corporation.

"That a charter or act of incorporation, when accepted, is a contract, is a proposition too self-evident and universally acceded to be drawn in question or to require the aid of argument or authority to support it. There is no dictum opposed to it to be found in the books; and it would be strange if there was, assuming (what is nowhere denied and can not be) that the Government can compel no one to become an incorporated body without their consent, and that acceptance of an act or charter of incorporation is necessary to the creation of an incorporated body. The grant being powers and franchises conferred and the stipulation on the part of the Government that they shall be held and enjoyed, on the implied conditions that they are to be exercised in the promotion of the objects of the charter; and the acceptance being an implied undertaking on the part of the grantees, that they will, in consideration of the charter and the franchises granted, perform the conditions; which, as it can not be forced upon them against their will, is necessarily a subject of contract requiring the concurring assent of the parties respectively concerned, and ripened into a contract for the fulfillment of the terms of the charter, when that concurrence is manifested by acceptance.

"In the King v. Pasmore, 3 Term, R. 97, Butler, J., said:

" 'I do not know how to reason on this point better than in the manner urged by one of the relators counsel who considered the grant of incorporation to be a compact between the town and a certain number of subjects, the latter of whom undertook, in consideration of the privileges, which are bestowed, to exert themselves for the good government of a place.'

"Or could it be said that a voluntary donation from the State for a grant of lands to this institution authorized to receive such donation, would be void and that the land so given could be taken away again by the State at pleasure and be given to another. If not, neither can the franchise, the incorporeal hereditaments, conferred by this act of incorporation be taken away. The principle is the same, equally applicable to both and one is just as irrevocable and inviolable as the other—property, though of different description, being the subject of it—among the rights granted, is

that of acquiring and holding property in perpetuity. And the State is pledged not only to the corporation but to all donors to the institution on the faith of this contract, and to revoke it would be to violate the plighted faith of the State; that it shall remain inviolable. If the State had a right to revoke at will this grant, it has the same right in relation to railroads, canal and other corporations, which will not be pretended. To say that the Legislature possesses power to pass capriciously or at pleasure a valid act, taking from one his property and giving it to another, would be, in this age and in this State, a startling proposition to which assent of none could be yielded, and yet there is nothing to forbid it, if it is once conceded; that they have the power to dissolve one corporation and take from it its franchises and property without its consent, and transfer them to another."

Or, it may may be added, to the State of Wyoming.

Regents of Univ. of Md. vs. Williams, 9 Gill & John., 375-427.

In the case of *The United States Bank vs. Planters' Bank of Georgia*, 9 Wheaton, 907, Chief Justice Marshall used the following language, which is quoted and approved in the case of *State Bank of South Carolina vs. Gibbs*, 3 McCord, 226, namely:

"It is a sound principle that when a Government becomes a partner in a trading company, it divests itself so far as concerns the transactions of that company of its sovereign character, and takes that of a private citizen."

It was accordingly held that a bank was not a public corporation because a part of the stock therein was owned by the public. Such corporation was nevertheless a private corporation.

The State University of Indiana was established by an act which made provision for a Board of Trustees and enacted that they and their successors should be a body politic with the style of "The Trustees of the Indiana University." In the case of *State vs. Carr*, 111 Ind., 335, the Court held said University to be private and not a public institution. The Court in its opinion said:

"That the University was established under the direct authority of the State through a special act of the Legislature, or that the charter contained provisions of a purely public character, nor yet that the institution was established and is and should be perpetually maintained at the public expense for the public good, does not make it a public corporation."

In *Downing et al. vs. Indiana State Board of Agriculture*, 12 L. R. A., 664, the State Board of Agriculture of Indiana created a body corporate with perpetual succession, including as ex-officio members the president of each county agricultural society, and which is in a sense an educational institution required to hold an annual meeting and receive reports from county societies and make an annual report to the Legislature, its fund having been received for the most part from other sources than the State, was held to be a private and not a public corporation, although no shares of stock were issued.

In *Board of Education vs. Blackwell*, 10 N. E. Reports, 378 (Ill.), The Normal University of Illinois incorporated under the name of "The Board of Education of the State of Illinois," was held to be a private corporation and that the facts the Board of Trustees of said institution repeatedly represented themselves to the Legislature as a public corporation and asked for appropriations, that the Legislature by a subsequent act declared that the State Normal University was a state institution and that the property of the board was the property of the State and that the State thereafter made appropriations for the support of the institution which were accepted and used by it, did not operate to change the character of the corporation from a private corporation.

"The Legislature of North Carolina, in the year 1789, granted to the Trustees of the University, all the property that has heretofore or shall hereafter escheat to the State, and by another act passed in the year 1794, they granted confiscated property within the State.

"By an act passed in the year 1800, they declared 'that from and after the passage of this act, all acts and clauses of acts which have heretofore granted power to the Trustees of the University to seize and possess any escheat or confiscated property, real or personal, shall be, and the same is, hereby repealed and made void.'

"'*And Be It Further Enacted*, That escheated or confiscated property which the said Trustees, their agents or attorneys, have not legally sold by virtue of the said laws, shall from hence revert to the State, and henceforth be considered as the property of the same, as though such laws had never been passed.' The Trustees aforesaid, in pursuance of the powers vested in them by the act of 1789, have brought this suit to recover the possession of a tract of land escheated to the State before the passing of the

repealing act in the year 1800. The defendants have pleaded this repealing act in bar, in which they allege the power of the Trustees to support this action is entirely destroyed. It is, therefore, now to be considered how far the Trustees have title under the act of 1789, and, in the next place, how far they are divested of that title by the repealing act of 1800."

Trustees of University of North Carolina vs. Fay, 1 Murphy (4 N. C.), 81.

The Court in this opinion further said:

"The Constitution directed the General Assembly to establish this institution and endow it. We view this corporation as standing on higher grounds than any other or aggregate corporation. It is not only protected by the common law, but is sanctioned by the Constitution. * * * But if a Legislature can deprive the University of appropriated and vested funds, they can do that which will produce the same consequence; for, depriving the institution of funds and refusing to make any additional appropriations, there never can exist in the State any public school or schools, and thus the Legislature may indirectly affect that purpose which, if expressed in words before mentioned, they could not do. * * * And though the Trustees are a corporation established for public purposes, yet their property is as completely beyond the control of the Legislature as property of individuals, or that of any other corporation."

It was held in this case that the State had no title to the lands claimed, but that the same belonged perpetually to the Trustees of the University.

With implicit faith in the honor of the State and the guaranty of good faith and inviolability held out in the charter, the Trustees of the Wyoming Agricultural College accepted the sacred trust funds devised and bequeathed by the last will and testament of Phillip Wisser, deceased; and with the same confidence and reliance they expended a portion of said funds in the purchase of a site for said College, placing the title thereto in the State of Wyoming.

By the repealing act, if upheld, the College is destroyed, the Trustees thereof abolished, and these sacred trust funds confiscated to the State, or transferred to the University of Laramie. The Court can not censure the Trustees for defending said trust

funds and property as with their lives and in rebelling against this high-handed act of tyranny and perfidy by the Legislature of Wyoming.

We respectfully submit that on account of the manifest error committed, as shown by the record in this case, the judgment of the Supreme Court of the State of Wyoming should be reversed, and this cause remanded, with directions to said Court to overrule the demurrer to the petition.

Respectfully submitted,

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